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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,348	09/13/2004	Gioacchino Coppi	2541-1025	3855

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EXAMINER

NGUYEN, TUAN VAN

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 12/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/507,348

Applicant(s)

COPPI, GIOACCHINO

Examiner

Tuan V. Nguyen

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>13/9/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Grudem et al (U.S. 6,511,491).**
3. Referring to claims 1-4, Grudem et al disclose (see Fig. 3) a stent device 10, wherein the device comprises a annular element or tubular element having a first portion (20) or first end and a second portion 40 or second end and bears a plurality of outwardly-projecting slender elements (26, 22, 42) arranged in proximity of at least one of the first end and the second end. The slender elements (26, 22) are arranged in proximity of the first end (20) and exhibit a free end (28, 24) facing towards the second end (40). The slender elements (42) are arranged in proximity of the second end (40) and exhibit a free end (44) facing towards the first end (20).
4. As to the recitation that “a device for anastomosis”, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention

from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

5. **Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Kleshinski (U.S. 5,755,778).**
6. Referring to claims 1-4, Kleshinski discloses an anastomosis device 10, wherein the device comprises a tubular element having a first collar (14) or first end and a second collar (16) or second end and bears a plurality of outwardly-projecting slender elements (20) arranged in proximity of at least one of the first end and the second end. The slender elements (20) are arranged in proximity of the first end and exhibit a free end facing towards the second end (16). The slender elements (20) are arranged in proximity of the second end (16) and exhibit a free end facing towards the first end (14).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
 1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
9. Claims 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grudem et al (U.S. 6,511,491) further in view of Killion et al (U.S. 6,159,238).
10. Referring to claim 5, Grudem et al disclose the invention substantially as claimed except for the tubular element has a longitudinal profile section which is truncoconical and a transversal section which decreases in a direction going from the first end to the second end. Killion et al disclose an expanded stent device (see Figs. 3 and 6) is of a tapered configuration (see abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made by the applicant to use the tapered design, as disclosed by Killion et al, to incorporate into the device, as disclosed by Grudem et al, because this is a matter of design choice since such a design does not solved any stated problem.
11. Referring to claims 6-8, Grudem et al disclose (see Fig. 3) the slender elements are arranged along the circumference of the proximal to the first portion 20 and second portion (40). The slender elements 22, 26 of the first portion (20) or first end are reciprocally distanced at a smaller step with respect to a step at which the slender elements (42) arranged in proximity of the second portion (40) or second

end are reciprocally distanced. The slender elements (22, 26) are longer and more prominent than the slender elements (42).

12. Referring to claim 9, it is rejected for the same reason as claim 5.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan V. Nguyen whose telephone number is 571-272-5962. The examiner can normally be reached on M-F: 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, AnhTuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tuan V. Nguyen
November 24, 2005




ANHTUAN T. NGUYEN
SUPERVISORY PATENT EXAMINER

12/1/05.